

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

KENNETH SMITH,

Petitioner,

-vs-

FRANCISCO PINEDA, Warden,

Respondent.

:

Case No. 1:12-cv-196

:

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

:

RECOMMITTAL ORDER

This capital habeas corpus case is before the Court on the Warden's Objections (Doc. No. 13) to the Magistrate Judge's Report and Recommendations (Doc. No. 11) recommending, on remand from the Sixth Circuit, that this case be determined not to be a second or successive application for habeas corpus. Petitioner has responded to those Objections (Doc. No. 15).

The District Judge has preliminarily considered the Objections and believes the issues raised therein will be more appropriately resolved after further analysis by the Magistrate Judge. Accordingly, pursuant to Fed. R. Civ. P. 72(b)(3), this matter is hereby returned to the Magistrate Judge with instructions to file a supplemental report and recommendations.

s/Thomas M. Rose

September 26, 2012.

Thomas M. Rose
United States District Judge